

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

FRANK F. LOCKMAN, JR.,

Case No. 2:23-cv-00282-GMN-NJK

Plaintiff,

ORDER

v.

NEVADA DEPARTMENT OF  
CORRECTIONS MEDICAL, *et al.*,

Defendants.

Plaintiff Frank F. Lockman, Jr. brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison. (ECF No. 1). On March 17, 2023, this Court ordered Lockman to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before May 19, 2023. (ECF No. 3). The Court warned Lockman that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. (*Id.* at 2). Lockman subsequently filed a second incomplete application to proceed *in forma pauperis*, as well as multiple motions for extensions. (ECF Nos. 4, 5, 7). The Court granted Lockman one final opportunity to submit a fully complete application to proceed *in forma pauperis* by October 6, 2023. (ECF No. 9). That deadline expired and Lockman still has not filed a complete application to proceed *in forma pauperis*, nor did he request any further extension.

## I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to

1 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th  
2 Cir. 1987) (dismissal for failure to comply with court order). In determining whether to  
3 dismiss an action on one of these grounds, the Court must consider: (1) the public's  
4 interest in expeditious resolution of litigation; (2) the Court's need to manage its docket;  
5 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
6 cases on their merits; and (5) the availability of less drastic alternatives. See *In re*  
7 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting  
8 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

9 The first two factors, the public's interest in expeditiously resolving this litigation  
10 and the Court's interest in managing its docket, weigh in favor of dismissal of Lockman's  
11 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal  
12 because a presumption of injury arises from the occurrence of unreasonable delay in filing  
13 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542  
14 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of  
15 cases on their merits—is greatly outweighed by the factors favoring dismissal.

16 The fifth factor requires the Court to consider whether less drastic alternatives can  
17 be used to correct the party's failure that brought about the Court's need to consider  
18 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining  
19 that considering less drastic alternatives *before* the party has disobeyed a court order  
20 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th  
21 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that  
22 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's  
23 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled  
24 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).  
25 Courts “need not exhaust every sanction short of dismissal before finally dismissing a  
26 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779  
27 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until  
28 and unless Lockman either files a fully complete application to proceed *in forma pauperis*


1 or pays the \$402 filing fee for a civil action, the only alternative is to enter a another order  
2 setting another deadline. But the reality of repeating an ignored order is that it often only  
3 delays the inevitable and squanders the Court's finite resources. The circumstances here  
4 do not indicate that this case will be an exception. The Court has already granted  
5 Lockman multiple extensions. There is no evidence that Lockman did not receive the  
6 Court's most recent order or any reason to believe that Lockman would file a complete  
7 application to proceed *in forma pauperis* if granted another extension. Setting another  
8 deadline is not a meaningful alternative given these circumstances. So the fifth factor  
9 favors dismissal.

## 10 II. CONCLUSION

11 Having thoroughly considered these dismissal factors, the Court finds that they  
12 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without  
13 prejudice based on Lockman's failure to file a fully complete application to proceed *in*  
14 *forma pauperis* or pay the full \$402 filing fee in compliance with this Court's March 17,  
15 2023, May 22, 2023, and August 22, 2023, orders. The Clerk of Court is directed to enter  
16 judgment accordingly and close this case. No other documents may be filed in this now-  
17 closed case. If Lockman wishes to pursue his claims, he must file a complaint in a new  
18 case.

19 Lockman's pending incomplete application to proceed *in forma pauperis* (ECF No.  
20 4) is denied.

21  
22 DATED THIS 26 day of October 2023.

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26 Gloria M. Navarro, Judge  
27 United States District Court  
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